

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY ANTOINE IVORY,

Defendant-Appellant.

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UNPUBLISHED

November 13, 2014

No. 317994

Macomb Circuit Court

LC No. 2012-003852-FH

Before: WHITBECK, P.J., and FITZGERALD and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of domestic violence, second offense, MCL 750.81(3), and first-degree home invasion, MCL 750.110a(2). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to one year in jail for the domestic violence, second offense, conviction and 6 to 20 years' imprisonment for the first-degree home invasion conviction. We affirm.

Defendant argues that there was insufficient evidence for a rational jury to convict him of first-degree home invasion because he was in legal possession of the home, and he cannot have entered his own home without permission. Defendant contends that, at most, his actions constituted third-degree home invasion, not first-degree home invasion.<sup>1</sup>

This Court employs de novo review for challenges to the sufficiency of the evidence, *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010), and reviews the evidence in the light most favorable to the prosecution. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). If any rational jury could find that the essential elements of the crime were proven beyond a reasonable doubt, then the conviction must be affirmed. *Wolfe*, 440 Mich at 515.

The elements of first-degree home invasion are:

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<sup>1</sup> Defendant does not challenge his domestic violence, second offense, conviction on appeal.

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling. [*People v Wilder*, 485 Mich 35, 42; 780 NW2d 265 (2010), quoting MCL 750.110a(2).]

Based on the facts of this case, and as charged in the felony information, the relevant elements are that defendant (1) entered a dwelling without permission; (2) committed an assault, felony, or larceny while entering, being present in, or exiting the dwelling; and (3) entered, was present in, or exited the dwelling while another person was lawfully present inside. See *Wilder*, 485 Mich at 43.

The statute defines “without permission” as “without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling.” MCL 750.110a(1)(c). One may commit a home invasion in his or her own dwelling if the defendant has lost the legal right to enter the dwelling, such as through a court order. *People v Szpara*, 196 Mich App 270, 273-274; 492 NW2d 804 (1992). Furthermore, it does not matter that the defendant at one time had permission to enter the dwelling; the defendant must have had permission to enter the dwelling at the time of the alleged crime. See *People v Dunigan*, 299 Mich App 579, 583; 831 NW2d 243 (2013).

Defendant only challenges the sufficiency of the evidence as to the first element, arguing that there was not sufficient evidence for a rational jury to find beyond a reasonable doubt that he entered the dwelling without permission. We hold that, viewed in a light most favorable to the prosecution, there was sufficient evidence presented for a rational jury to find that defendant did not have the legal right to enter the dwelling. First, defendant admitted to police officers that he knew there was a no-contact order prohibiting him from contacting his wife Jackie Ivory, and that Jackie was in the house at the time. The existence of the court-ordered no-contact bond condition extinguished defendant’s legal right to be at the home while Jackie was present, and he could not legally enter the dwelling. See *Szpara*, 196 Mich App at 273-274.<sup>2</sup> Second, the

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<sup>2</sup> Defendant relies on an unpublished opinion of this Court to support his argument that he had a legal right to enter the home because he was also a lessee of the dwelling at issue. This Court is not bound by unpublished decisions of this Court pursuant to MCR 7.215(C)(1), and refuses to consider the cited opinion. Even if this Court were bound by the unpublished opinion, it is wholly distinguishable from the instant case because that defendant was not barred from lawful

prosecution entered testimony and exhibits showing that defendant forcefully entered the home, that he had been residing elsewhere at the time, and that Jackie believed she had to invite him back to the house.

Furthermore, defendant's argument that he held a possessory interest in the premises rested solely on Jackie's testimony at trial that she and defendant signed the land contract with which they were purchasing the home; defendant received mail at the home; defendant's name was on the property tax bills; and the city of Roseville issued defendant citations at the home for pet violations. Defendant did not enter into evidence any documents supporting Jackie's testimony.<sup>3</sup> Additionally, the prosecution entered evidence contrary to Jackie's testimony. Both certified abstracts of conviction from defendant's previous domestic violence convictions listed defendant's address as an Eastpointe home, while the home at issue here is in Roseville. The jury was free to accept or deny Jackie's testimony on the matter. This Court will not substitute its judgment for the jury's assessment of the weight of the evidence and credibility of witnesses. *Dunigan*, 299 Mich App at 582.

In consideration of the evidence in the light most favorable to the prosecution, a rational jury could find that sufficient evidence existed to prove beyond a reasonable doubt that defendant entered the home without permission.

Affirmed.

/s/ William C. Whitbeck  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray

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entry of his home by court order, while defendant herein was under bond condition to have no contact with his wife, Jackie Ivory.

<sup>3</sup> Defendant attached such documentation to his motion for peremptory reversal before this Court. As it was not part of the lower court record, this Court cannot consider it. MCR 7.210(A)(1); *People v Shively*, 230 Mich App 626, 628 n 1; 584 NW2d 740 (1998).